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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re K.D., a Person Coming Under the Juvenile Court Law.	B285481
THE PEOPLE, Plaintiff and Respondent, v. K.D., Defendant and Appellant.	(Los Angeles County Super. Ct. No. YJ38765)

APPEAL from an order of the Superior Court of Los Angeles County, J. Christopher Smith, Judge. Affirmed.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant

Attorney General, Noah P. Hill and Shezad H. Thakor, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court declared K.D. a ward of the court pursuant to Welfare and Institutions Code section 602,[1] after finding K.D. committed vandalism (Pen. Code, § 594, subd. (a)). The court made a finding the offense was a felony, and ordered K.D. home on probation.

K.D. contends the juvenile court erred in denying his motion to suppress his confession made after his arrest. K.D. argues the circumstances surrounding his confession rendered it involuntary. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Petition*

On July 20, 2016 a nondetained petition was filed pursuant to section 602, alleging that on or about May 20, 2016 K.D. committed felony vandalism of personal property in excess of $400, in violation of Penal Code section 594, subdivision (a).[2] The

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[1] All undesignated references are to the Welfare and Institutions Code.

[2] "Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism: [¶] (1) Defaces with graffiti or other inscribed material. [¶] (2) Damages. [¶] (3) Destroys." (Pen. Code, § 594, subd. (a).) Under Penal Code section 594,

petition alleged K.D. unlawfully and maliciously damaged and destroyed a 1997 Lexus automobile belonging to R.E.[3]

B. *The Jurisdictional Hearing*

At the August 2, 2017 jurisdictional hearing, K.D. filed a written motion under section 701 to suppress as involuntary his confession made while under arrest and in police custody. At the hearing, the juvenile court heard testimony from Los Angeles Police Officer James Lee and K.D., as well as argument of counsel, then denied the motion before adjudicating the merits of the petition.[4]

1. *The People's evidence*

R.E. testified he and K.D. were once, but no longer, close friends. On May 20, 2016 at around 2:30 a.m. R.E. was at home in his kitchen when he heard a very loud "shattering sound." He walked outside to look, and saw a blonde female getting into the passenger side of a car. The car drove away with its headlights off. R.E. identified the blonde female as Abigail Huntsman. R.E. did not see anyone else at this time.

About five minutes later the car that had fled returned with its lights still off, and parked nearby for "a bit" before

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subdivision (b)(1), if the amount of damage is $400 or more, it is punishable as a felony.

[3] An error in R.E.'s name appearing in the petition was corrected by amendment at the jurisdictional hearing.

[4] Lee's testimony was considered for purposes of both the motion to suppress and the adjudication hearing; K.D.'s testimony at the suppression hearing was only considered for the purpose of that hearing.

driving by R.E. at an "extremely fast" speed. R.E. saw Huntsman in the passenger seat, and K.D. was driving.

R.E. found his 1997 Lexus was damaged. Two of the tires were punctured, the car had been keyed, the rear license plate had been removed, and a rock had been thrown through the driver's window, smashing it. R.E. paid about $398 to replace the two tires and $46 to replace the license plate.

Los Angeles Police Officer Jeffrey Treat was on duty at the time of the incident and responded to R.E.'s location. R.E. told Treat he saw K.D. and Huntsman standing near his damaged vehicle. They then fled in a black Mercedes.

Around 11:45 p.m. that night Lee and his partner, Officer Awaji, encountered a black car parked in a "no parking" zone. Huntsman was asleep in the car. The car had no license plate, but Huntsman told Lee the car belonged to K.D., who she said was somewhere nearby.

When K.D. returned, Lee checked K.D.'s identification, and learned he was a named suspect in a vandalism. Lee handcuffed K.D. and questioned him about his car. Lee then placed K.D. in the back of the patrol car and read K.D. his *Miranda*[5] rights. K.D. stated he understood.

Lee then told K.D. he was a named suspect in the vandalism of a car that had occurred early that morning. Lee did not reveal R.E.'s identity as the owner of the vandalized car. K.D. denied any involvement. Lee believed K.D. was lying based on his body language because K.D. was shifting and looking away. Lee told K.D. if he cooperated and gave a true statement it would be more favorable for him than if he lied. Lee did not

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[5] *Miranda v. Arizona* (1966) 384 U.S. 436, 471 (*Miranda*).

promise K.D. he would be released from custody for telling the truth. K.D. continued to deny his involvement, but identified R.E. as the victim, stated the vandalized car was a Lexus, and suggested Huntsman may have been involved.

On May 21, 2016 at about 1:00 a.m. Lee brought K.D. and Huntsman to the police station. At the station, Lee allowed K.D. to make phone calls to his mother and father. Lee also interviewed Huntsman. Huntsman revealed R.E.'s missing license plate had been thrown into a storm drain. Lee went to the storm drain, found the license plate, and photographed it. He then returned to the station.

At about 2:30 a.m. Lee resumed his questioning of K.D. Lee told K.D. that Huntsman had provided information about the missing license plate. K.D. then admitted to slashing the front left tire on R.E.'s car and removing the license plate. K.D. wrote out a statement to this effect on a form that also contained a written *Miranda* admonishment. At no time did Lee threaten K.D., nor did he make any promise of a specific outcome in exchange for K.D.'s cooperation.

2. *K.D.'s testimony*

K.D. testified he was at the beach the night of May 20, 2016. He received a phone call from Huntsman, who told him a police officer was waiting by his car to speak with him. When K.D. returned to the car, he was approached by Lee, who asked K.D. for identification.

Lee placed K.D. in the back of the patrol car without handcuffs, then removed him from the car, placed him against a fence, handcuffed him behind his back, and returned him to the patrol car. Lee then advised K.D. of his *Miranda* rights. At that

time, K.D. was cold, not feeling well, and stressed, and he "didn't understand what was going to happen onward." Despite answering "Yes, sir" when Lee asked whether he understood his rights, K.D. testified he did not understand the admonition because he "wasn't processing" and "wasn't listening" due to his confusion over why he was being arrested.

Lee questioned K.D. about the vandalism while Lee stood outside the patrol car and K.D. was in the back seat. Lee told K.D. he would "be better off if [he] were to be truthful immediately." K.D. denied involvement, but mentioned R.E.'s name and said he might have information. Lee stepped away from the car at a few points, returning only to tell K.D. to continue waiting. At some point K.D. told Lee his handcuffs were tight and asked to have them removed, but he remained handcuffed. K.D. waited in the back of the patrol car, handcuffed, for 45 minutes to an hour.

Later at the police station, K.D.'s handcuffs were removed, and he was placed in a room and told to wait. When Lee returned, K.D. asked to make a phone call, which Lee allowed. K.D. attempted to call his mother and father, without success.

Sometime between 2:00 and 3:00 a.m. Lee returned to question K.D. K.D. testified he was "suffering from a lot of stress at the time, because [he] had never been arrested before." He had a headache and felt tired and fatigued. K.D. was scared and uncertain about what was going on, and he was frustrated because he could not reach his father, who was a retired Los Angeles Police Department officer.

Lee told K.D. he had spoken with Huntsman, and asked K.D. where the license plate was. Lee handed K.D. a form and told him to write his version of events. K.D. wrote a confession,

but testified it was not the truth. He denied having been at R.E.'s house on the night of the vandalism. K.D. confessed only because he felt intimidated by Lee's questions and because he was stressed, tired, cold from the time at the beach, and hungry. He was also concerned about "police brutality," believing Lee had "some type of v[e]ndetta against [him]." He falsely confessed so he would be released to go home, where he could speak to his father. K.D. also testified his father had "trained [him]" to "just admit guilt" under these circumstances, and that things would be rectified later in court.

On cross-examination, K.D. testified Lee was not hostile, and seemed "a little bit insecure." Lee never yelled or screamed at K.D. Lee never promised K.D. would be released if he confessed, but urged him to tell the truth. Neither Lee nor his partner Awaji ever threatened or physically intimated K.D. However, Awaji was "rough" in handling K.D. when escorting him to the restroom, and each time K.D. was placed in handcuffs, they were too tight, which hurt.

3. *K.D.'s motion to suppress*

At the suppression hearing, the People argued Lee's questioning tactics were permissible, the kind "police officers use every day." According to the People, the time K.D. spent waiting in the back of the patrol car and at the station was due to Lee's alternating questioning of Huntsman and K.D., a strategy that ultimately proved fruitful when Lee confronted K.D. with information about the vandalism provided by Huntsman. The People argued K.D. was 17 at the time and intelligent, and he had been properly advised of his *Miranda* rights.

K.D. argued his confession was involuntary because Lee would not accept his denials, and K.D. was stressed, tired, and confused. Further, the questioning took place in the early morning and nearly three hours passed from Lee's initial encounter with K.D. at the beach to his confession at the police station. K.D. argued he confessed just to give Lee what he believed Lee wanted.

The juvenile court denied K.D.'s motion. The court noted K.D.'s age and intelligence, stating, ". . . I don't think there would have been anything to give Officer Lee any concerns about whether or not [K.D.] understood what [*Miranda*] rights he was waiving." The court noted K.D. made no claim he had relied on any representation or promise by Lee that a confession would lead to leniency. The juvenile court concluded no "pressure" or "inducement" motivated K.D. to confess, found the confession was voluntary, and admitted his statement into evidence.

4. *The juvenile court's jurisdictional findings and dispositional order*

The juvenile court found K.D.'s testimony regarding the events of the night of the vandalism was not believable. By contrast, the court found Lee was believable. The court also gave weight to K.D.'s written confession.

The juvenile court found the allegations in the petition to be true and deemed the offense a felony. The court declared K.D. a ward of the court under section 602, and placed him home on probation.

DISCUSSION

A. *Standard of Review*

The People have the burden of establishing by a preponderance of the evidence that a defendant's confession was voluntarily made. (*People v. Wall* (2017) 3 Cal.5th 1048, 1066 (*Wall*); *People v. Peoples* (2016) 62 Cal.4th 718, 740.) We review a statement's voluntariness de novo; we review the trial court's factual findings for substantial evidence. (*Wall*, at p. 1066; *People v. Winbush* (2017) 2 Cal.5th 402, 452 (*Winbush*); *People v. Neal* (2003) 31 Cal.4th 63, 80 (*Neal*).) "In reviewing the trial court's determinations of voluntariness, we apply an independent standard of review, doing so 'in light of the record in its entirety, including "all the surrounding circumstances—both the characteristics of the accused and the details of the [encounter]" . . . .'" (*Neal*, at p. 80.)

B. *Applicable Law*

"'[A]n involuntary confession may not be introduced into evidence at trial.'" (*People v. Spencer* (2018) 5 Cal.5th 642, 672 (*Spencer*); accord, *Neal, supra*, 31 Cal.4th at p. 67 [defendant's confessions inadmissible where detectives intentionally continued interrogation of defendant despite his nine requests to speak to an attorney, badgered him, and held him in custody overnight without food, water, or toilet facilities before he confessed].) "In determining whether a confession is involuntary, we consider the totality of the circumstances to see if a defendant's choice to confess was not '"'"essentially free"'"' because his will was overborne by the coercive practices of his interrogator." (*Spencer*, at p. 672; accord, *Winbush, supra*, 2 Cal.5th at p. 452.) A

suspect's statements are "not 'essentially free' when a suspect's confinement was physically oppressive, invocations of his or her *Miranda* rights were flagrantly ignored, or the suspect's mental state was visibly compromised." (*Spencer*, at p. 672.) "'A confession may be found involuntary if extracted by threats or violence, obtained by direct or implied promises, or secured by the exertion of improper influence.'" (*Wall, supra*, 3 Cal.5th at p. 1066; accord, *Neal*, at p. 84 ["Promises and threats traditionally have been recognized as corrosive of voluntariness."].) "To be considered involuntary, a confession must have resulted from coercive police conduct rather than outside influences." (*Winbush*, at p. 452; accord, *People v. Linton* (2013) 56 Cal.4th 1146, 1179 (*Linton*).)

A minor's "'age, intelligence, education and ability to comprehend the meaning and effect of his confession are factors in that totality of circumstances to be weighed along with other circumstances in determining whether the confession was a product of free will and an intelligent waiver of the minor's Fifth Amendment rights . . . .'" (*In re Elias V.* (2015) 237 Cal.App.4th 568, 576 (*Elias V.*); accord, *People v. Lessie* (2010) 47 Cal.4th 1152, 1166-1167 ["'[A]dmissions and confessions of juveniles require special caution'[citation] and . . . courts must use 'special care in scrutinizing the record' to determine whether a minor's custodial confession is voluntary . . . ."].)

C. *The Juvenile Court Did Not Err in Denying K.D.'s Motion To Suppress His Confession*

K.D. argues his confession was involuntary because of his physical and psychological state at the time of his interrogation at the police station, the duration of his encounter with the

police, and his lack of experience with the criminal justice system. We disagree.

K.D. contends he was cold, tired, stressed, and hungry during his interrogation at the police station, all of which led him involuntarily to confess. But even if these physical and psychological stressors contributed to K.D.'s decision to confess, there is no evidence they "resulted from coercive police conduct." (*Winbush, supra*, 2 Cal.5th at p. 452 [defendant's belief he would not get the death penalty if he confessed irrelevant where police were not the source of his belief]; accord, *Linton, supra*, 56 Cal.4th at p. 1179 [rejecting defendant's claim his confession was involuntary based on his learning disabilities, lack of criminal justice experience, depression, anxiety, headaches, attention deficit disorder, substance abuse, and history of victimization where there was no evidence interviewers exploited any of these personal characteristics]; cf. *Neal, supra*, 31 Cal.4th at p. 84 [confession involuntary where defendant was held overnight by police without food, water, or access to a toilet].) There is no evidence K.D. attempted to invoke his right to end the questioning so that he could rest,[6] nor any evidence he requested food or warmer clothing to increase his comfort. (See *People v. Hensley* (2014) 59 Cal.4th 788, 814-815 [confession voluntary despite defendant's argument he was hungry and

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[6] Lee informed K.D. of his *Miranda* rights at the beach at the time of his arrest, including his right to remain silent. K.D. testified he did not understand those rights, despite responding in the affirmative each time Lee asked whether he did. K.D. does not argue on appeal Lee's *Miranda* warnings were improper or that his waiver of those rights was not knowing, intelligent, and voluntary.

needed medical treatment where "[h]e made no requests"].) In fact, K.D. testified he was allowed to use the restroom when he needed it, suggesting Lee and Awaji were receptive to K.D.'s basic needs. Further, there are no facts suggesting Lee or Awaji was aware of K.D.'s distressed state. (Cf. *In re T.F.* (2017) 16 Cal.App.5th 202, 218, 209 [confession of 15-year-old suspect with intellectual disability was involuntary where he was subjected to "dominating, unyielding, and intimidating" questioning, "was very emotional, sobbing at numerous points during the interrogation," and "repeatedly said he wanted to go back to class or to go home"].)

K.D. testified he felt intimidated by Lee's questions, but makes "'no assertion of coercive tactics other than the contents of the interrogation itself.'" (*Spencer, supra*, 5 Cal.5th at pp. 672-673 [confession voluntary where "officer engaged in no name-calling, no obvious strong-arm tactics, and no base appeals to [defendant's] deeply held beliefs"]; accord, *People v. Carrington* (2009) 47 Cal.4th 145, 170 [""'Questioning may include exchanges of information, summaries of evidence, outline of theories of events, confrontation with contradictory facts, even debate between police and suspect.'""].) K.D. was not yelled at, threatened, or physically harmed outside of the tightness of his handcuffs, which had been removed for over an hour by the time of his confession.

Nor was K.D.'s interrogation unduly prolonged. Lee encountered K.D. around midnight, Lee brought him to the station around 1:00 a.m., and by around 3:00 a.m. K.D. had confessed. The time during which K.D. was actually questioned by Lee was necessarily less than three hours because, according to K.D.'s testimony, he waited long periods both in the patrol car

and at the police station. (See *Winbush, supra*, 2 Cal.5th at pp. 416, 454 [interview sessions "were not unduly protracted" where 19-year-old defendant was interviewed in custody for only about six hours before he confessed]; cf. *Neal, supra*, 31 Cal.4th at p. 84 [involuntary confession after 19 hours in custody].)

K.D. also argues his inexperience with the police contributed to his confession, but again there is no evidence the police exploited this characteristic. (See *People v. Dykes* (2009) 46 Cal.4th 731, 742, 753-754 [rejecting 20-year-old defendant's claim "his decision to confess was based upon his youth and his absence of experience with the criminal justice system" because "there was no indication of police exploitation of these circumstances"].) Although K.D. had not been arrested or interrogated by law enforcement or juvenile justice authorities before, he testified he had been "trained" by his father, a retired police officer, about how to handle such circumstances, and stated a number of times he followed "case law" about police officers and their tactics.

Nor was K.D. improperly induced by promises of leniency to confess against his will, as he suggests. By K.D.'s own description, Lee only "urg[ed] [him] to tell the truth." Exhortations to tell the truth are not impermissible inducements or promises of leniency. (See *People v. Case* (2018) 5 Cal.5th 1, 26 ["'Absent improper threats or promises, law enforcement officers are permitted to urge that it would be better to tell the truth.'"]; *People v. Holloway* (2004) 33 Cal.4th 96, 117 [statement that admitting true circumstances of crime "could 'make[] a lot of difference' to the punishment" was not improper inducement].)

Elias V., relied on by K.D., is distinguishable. In *Elias V.*, a police detective interviewed the 13-year-old suspect in a small

room at his school, seated next to the principal, with another officer present and a third uniformed deputy standing outside the door. (*Elias V., supra*, 237 Cal.App.4th at pp. 581, 591.) The court noted "the mere fact of police questioning of a minor in the schoolhouse setting may have a coercive effect, because the child's 'presence at school is compulsory and [his] disobedience at school is cause for disciplinary action.'" (*Id.* at p. 581.) The minor was presented with false evidence and subjected to "relentless" accusations of his guilt. (*Id.* at pp. 582-583 [recounting over 23 accusations or questions presuming guilt during interview lasting only 20-30 minutes].) The court concluded, "There is every reason to believe the aggressive, deceptive, and unduly suggestive tactics [the officer] employed would have been particularly intimidating in these circumstances." (*Id.* at p. 591.)

Here, K.D. was 17 at the time of the incident and less than a month from his 18th birthday. K.D. was questioned in and around the patrol car and at the police station, and by all accounts with only Lee present. Further, Lee presented no false evidence, and K.D.'s guilt was not repeatedly "'posited as a fact'" as it was in *Elias V.* (*Elias V., supra*, 237 Cal.App.4th at p. 581.) Rather, Lee confronted K.D. with evidence regarding the missing license plate gathered from his interview with Huntsman, which directly led to K.D.'s confession. Although K.D. felt Lee would not believe his denials, there is no evidence of anything approaching the relentless accusations in *Elias V.*

Considering the totality of the circumstances, the People carried their burden to show K.D. confessed to vandalizing R.E.'s car of his own free will.[7]

DISPOSITION

The juvenile court's jurisdictional findings and dispositional order are affirmed.

FEUER, J.

WE CONCUR:

ZELON, Acting P. J.

SEGAL, J.

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[7] In a footnote, K.D. requests, without any legal argument or factual support, we consider whether his juvenile court attorney provided ineffective assistance by failing to scrutinize Lee's professional records for evidence of past misconduct. We decline to do so. (See *People v. Myles* (2012) 53 Cal.4th 1181, 1223, fn. 16, citing *People v. Lindberg* (2008) 45 Cal.4th 1, 51, fn. 14 ["a matter asserted in a perfunctory manner is not properly raised"]; *Gonzalez v. Mathis* (2018) 20 Cal.App.5th 257, 274, fn. 4 ["'We . . . need not address . . . contention[s] made only in a footnote . . . .'"]; *People v. Carroll* (2014) 222 Cal.App.4th 1406, 1412, fn. 5 ["we need not address defendant's perfunctory, undeveloped claim she set forth in the footnote"].)